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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,103	05/22/2001	John P. Lambino	INTL-0545-US (P11071)	9209

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EXAMINER

TRUJILLO, JAMES K

ART UNIT	PAPER NUMBER
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2116

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/863,103

Applicant(s)

LAMBINO ET AL.

Examiner

James K. Trujillo

Art Unit

2116

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED _____ FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-25.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
13. ☐ Other: _____.

**A. ELAMIN
PRIMARY EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 9/16/2005 have been fully considered but they are not persuasive.

Applicants object to the finality of the present office action. Applicants argue in substance that office action failed to answer applicant's traversal. The examiner respectfully disagrees. Applicant's traversal was based on an amendment to the claims. The office action addressed the amendment by making different rejections necessitated by amendment. It is believed that new rejections addressed the traversals, even though the same reference was used.

Applicants also argue in substance the setting of a flag is different from and does not teach or suggest modifying an address bit of the execution address. Applicants point to figure 4, where, as applicants describe Miller as "inverting the state of an address line, A16, not the address bit of the execution address". The examiner disagrees. A16 of Miller is an address line, which is an address bit. In fact is it the 16th bit of the address. Applicants are directed to col. 7, lines 36-42 where Miller describes the address A16 will be inverted so that the boot block code will be retrieved from the 32-bit address location FFFFE000hex to address FFFFF000hex as depicted in figure 4 as well by the use of the flag. The hexadecimal notation clear shows that the 16th bit has changed using the flag (11111111111110000000000000000000 to 1111111111111100000000000000). In sum the flag causes the 16th bit of the address to change from a 0 to a 1 and vice versa.

Applicants also argue in substance that Miller does not teach or suggest modifying an address bit is maintained during a power cycle. The examiner disagrees. Applicants are directed col. 5, line 65 through col. 6 line 9. Miller discloses that the flag (and thereby the address) will be maintained in the event of a power failure. A power failure is a type of power cycle.

Applicants further argue that it is possible that means other battery may be used to maintain the state of the flag bit in Miller is not inherent and that motivation in the manner suggested in the office action appears to impermissibly from the teaching of the present specification. The examiner is aware of other types of "nonvolatile memory" that is why the rejection is under 35 USC 103. Further the present invention only describes that the battery is similar to those used in maintaining semi-volatile memory such as complementary metal oxide semiconductor (CMOS) memory (paragraph [0021] of the instant application) and otherwise does not disclose any motivation for using a battery so the motivation, therefore motivation does not come from the instant application.

Applicants lastly argue in substance that Miller does not describe a jumper for adjusting the address bit if the backup battery fails. Miller discloses that a jumper may be used if no other hardware is available and will maintain the address until removed (col. 8, lines 30-35). Thus, Miller teaches the jumper would be used when power is not maintained to keep the address..